SUPREME COURT OF THE UNITED STATES.

No. 286.

THE UNITED STATES APPELLANTS

vs.

CHARLES D. GILMORE.

APPEAL FROM THE COURT OF CLAIMS.

INDEX.

	Original.	Print.
Claimant's petition	1	1
Traverse by the assistant solicitor	4	2
Final judgment of the court	5	3
The finding of facts and conclusions of law on which the court founded its judgment	6	3
The order of the court allowing an appeal	8	3
Certificate	9	4

1 IN THE COURT OF CLAIMS.

CHARLES D. GILMORE
vs.
THE UNITED STATES.

Petition.

To the Honorable the Court of Claims:

The petition of Charles D. Gilmore, of the city of Washington and District of Columbia, respectfully represents:

That on the 20th day of June, A. D. 1863, he was duly commissioned as a lieutenant colonel in the 20th Regiment of Maine Volunteers, and regularly mustered as such lieutenant colonel into the military service of the United States.

That he entered upon the duties of said office on the day last aforesaid, and continued in the performance thereof until the 16th day of March, A. D. 1865, when he was duly commissioned and mustered into the said military service as colonel of said regiment.

That by reason of the premises, and of the ninth and tenth sections of the act of Congress approved March 30, 1814, and of the twelfth section of the act of Congress approved April 24, 1816, your petitioner was entitled to receive, as a part of his compensation, the pay, rations, and clothing of two servants, or money in lieu thereof.

2 That from the time your petitioner entered the military service of the United States as lieutenant colonel as aforesaid, up to the 3d day of March, A. D. 1865, he actually kept two private servants in his employ, the names and descriptions of whom were regularly given in the several certificates attached to his pay accounts, according to the statutes and army regulations in such case made and provided, but which said certificates and pay accounts are not accessible to your petitioner. Your petitioner, however, believes that said certificates and pay accounts are in the possession of the Paymaster General of the United States Army, and asks for reference thereto for greater certainty.

And your petitioner further represents, that by virtue of the twelfth section of the act of Congress approved April 24, 1816, the pay, rations, and clothing of a military officer's private servants are fixed at the rate allowed by law to privates of infantry in the military service of the United States.

Your petitioner further represents, that by virtue of the first section of the act of Congress approved June 20, 1864, the pay of privates of infantry was fixed by law at sixteen dollars per month, from the 1st day of May, 1864; and that, by reason thereof, your petitioner was entitled to receive thirty-two dollars per month as pay for his said two servants from the 1st day of May, 1864, to the said 3d day of March, 1865. But your petitioner avers, that from the said

1st day of May, 1864, to the 3d day of March, 1865, he was paid only at the rate of twenty-two dollars per month, as the pay of his said servants.

Your petitioner therefore claims that there is due him the sum of one hundred and one dollars, and for that sum he asks judgment, with his reasonable costs of suit.

Your petitioner further avers that he has made application to the proper department of the government for the amount of money herein claimed, and that his application was rejected; that he has always borne true allegiance to the government of the United States, and that the amount herein claimed is justly due your petitioner, after allowing all just credits and offsets.

CHARLES D. GILMORE.

3 DISTRICT OF COLUMBIA, *Washington County, ss:*

Charles D. Gilmore, of said district, being duly sworn according to law, says, that no assignment or transfer of the claim mentioned in the above and foregoing petition, or any part thereof, or any interest therein, has been made, except as in said petition stated; that he is justly entitled to the amount stated in said petition, as due from the United States, after allowing all just credits and offsets; and that he verily believes the facts as stated in said petition are true.

CHARLES D. GILMORE.

Sworn to and subscribed before me, this 20th day of October, 1866.

[L. S.] GEORGE FORREST,
the Peace.

In the United States Court of Claims.—October term, A. D. 1866.

4 THE UNITED STATES *ats.* CHARLES D. GILMORE. } No. 2,528.

And the said defendants, by John J. Weed, their Solicitor, come and make answer to the petition of the claimant on file herein; and not confessing the same, or any part thereof, doth hereby most expressly deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of said petition as sets forth and avers that the United States is indebted to said claimant in the sum of one hundred and one dollars.

The defendants say that they are not indebted to said claimant in said sum of money, nor any part thereof.

JOHN J. WEED,
Assistant Solicitor for the United States.

5 In the Court of Claims.

CHARLES D. GILMORE
vs.
THE UNITED STATES.

And now, to wit, 25th of June, 1867, the Court, upon due consideration of the premises, do find in favor of the claimant, and do order, adjudge, and decree, that the said Charles D. Gilmore, have and recover, of and from the United States, the sum of one hundred and one dollars, ($101.)

By the Court.

6 CHARLES D. GILMORE
vs.
THE UNITED STATES.

The petitioner claimed that a sum of money ($,) was due to him from the United States, for the pay of two servants.

And the Court found the facts to be:

1. That the petitioner was a lieutenant colonel in the volunteer army of the United States, from the 20th of June, 1863, to the 16th day of March, 1865, and during that time performed the duties of said officer in actual service.

2. That the petitioner was a colonel in the volunteer army of the United States, from the 16th day of March, 1865.

7 3. That from the 20th of June, 1863, to the third day of March, 1865, the petitioner actually kept two private servants in his employ who were not soldiers, and whose names and descriptions were regularly given in the several certificates attached to his pay accounts as by law required.

4. That from the first day of May, 1864, to the 3d day of March, 1865, the petitioner was paid by, and received from the United States, pay for said two servants, at the rate of twenty-two dollars per month.

And on the facts stated, the Court adjudged that the petitioner was entitled to be paid for his said two servants, at the rate of sixteen dollars per month for each servant during said time, and that there was due to him from the United States the sum of one hundred and one dollars, for which a certificate are ordered.

8 At a Court of Claims, held at the Capitol in the City of Washington, on Monday, the 12th day of August, A. D. 1867,

CHARLES D. GILMORE
vs.
THE UNITED STATES.

Mr. Norton, Solicitor of the United States, submitted a petition for the allowance of an appeal in this case from the judgment entered therein, on the 25th day of June, 1867, to the Supreme Court of the United States.

Whereupon, it was ordered that an appeal be allowed as prayed for.

9 CHARLES D. GILMORE
vs.
THE UNITED STATES.

I, Sam'l H. Huntington, chief clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts, in the above entitled cause, of the final judgment of the Court thereon, of the finding of the facts, and the conclusions of law on which the Court formed its judgment, and of the order of the Court allowing an appeal therefrom by the Solicitor of the United States.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Washington, this 11th day of November, A. D. 1867.

[SEAL.]

SAM'L H. HUNTINGTON,
Chief Clerk of the Court of Claims.

UNITED STATES COURT OF CLAIMS.

Appeal to the Supreme Court.

CHARLES D. GILMORE *vs.* THE UNITED STATES.

JAN. 7, 1869.

I certify that the judgment in the above-stated case will affect a class of cases.

JOSEPH CASEY,
Ch. J. Ct. of Claims.

COURT OF CLAIMS, *Feb. 24th*, 1869.

I, Sam'l H. Huntington, chief clerk Court of Claims, do hereby certify that the foregoing is a true copy of the original certificate on file in the above-entitled cause.

In testimony whereof I have hereunto set my name and affixed the seal of said court, at Washington, this 24th day of February, 1869.

[SEAL.] SAM'L H. HUNTINGTON,
Chief Clerk Court of Claims.

FEB. 25, 1869.

It is hereby stipulated that the foregoing certificate may be a part of the transcript of record in the above case.

T. LYLE DICKEY,
Assistant Attorney General.
CHIPMAN & HOSMER,
Attorneys for Appellee.

Supreme Court of the United States.

No. 286.

THE UNITED STATES, Appellants.

versus

CHARLES D. GILMORE.

APPEAL FROM COURT OF CLAIMS.

ARGUMENT FOR THE DEFENDANT.

Chipman, Hosmer & Co.,
COUNSEL FOR DEFENDANT.

McGILL & WITHEROW, Printers and Stereotypers, Washington, D. C.

Supreme Court of the United States.

No. 286.

THE UNITED STATES, APPELLANTS,

vs.

CHARLES D. GILMORE.

APPEAL FROM THE COURT OF CLAIMS.

ARGUMENT FOR DEFENDANT.

This cause is before this Court upon appeal of the United States from a judgment rendered in the Court of Claims, at the December term, 1866, in favor of the defendant, for the sum of one hundred and one dollars.

The facts found by the court below, upon which the judgment rests, are set out on page 3 of the printed record, from which it appears—

That the defendant was an officer of the military service, with the rank of lieutenant colonel, from the 20th day of June, 1863, to the 16th day of March, 1865, and from the last date forward until honorably discharged he held the rank of colonel; that during this period he was in actual service as such officer, and kept two private servants, who were not soldiers; that from the 1st day of May, 1864, to the third day of March, 1865, he received from the United States pay for said two servants at the rate of twenty-two dollars per month.

The pleadings in the case are found on pages 1 and two of the printed record; the judgment of the court, finding of facts, and order allowing appeal, on pages 3 and 4 of the record.

The defendant claims, that by reason of the premises and of the 12th section of the act of Congress, approved April 24, 1816, (3 Stat. at Large p. 299,) he was entitled to receive as a part of his compensation the pay, rations, and clothing for each servant actually kept, not exceeding the number allowed

by existing regulations, or money in lieu thereof; and that by virtue of said section the pay, rations, and clothing of a military officer's private servants are fixed at the rate allowed by law to privates in the military service of the United States; that by virtue of the 1st section of the act of Congress approved June 20, 1864, the pay of privates was fixed by law at sixteen dollars per month from the 1st day of May, 1864; and that by reason thereof he was entitled to receive thirty-two dollars per month as pay for his said two servants from the 1st day of May, 1864, to the 3d day of March, 1865; whereas he received for said two servants during this last period only the sum of twenty-two dollars per month.

The action brought by the defendant in the court below was for the difference of pay named. General orders War Department July 8, 1816, fixes the number of servants allowed to officers, and the Army Regulations also prescribe the number. By these a lieutenant colonel is entitled to two servants.

The question involved in this inquiry, then, may be stated as follows:

Are officers of the army, who were in commission and served faithfully, entitled to additional pay for the legal number of private servants, from May 1, 1864, (when the pay of private soldiers was increased to sixteen dollars per month,) to March 3, 1865, (at which date Congress declared "that the measure of allowance for pay for an officer's servant is the pay of a private soldier, as fixed by law at the time.")

The history of the legislation on this subject, important to a right understanding of the question, is briefly this:

Prior to 1812 officers were allowed to detail from the ranks a certain number of "waiters," but no provision was made for paying the officers money in lieu of this privilege, so as to enable them to employ servants, until this date. In 1812 it was provided that "officers who shall not take waiters from the line of the army *shall receive the pay, clothing, and subsistence of a private soldier, or as many waiters as they may actually keep*, not exceeding the actual number allowed by existing regulations. (Act approved July 6, 1812; 2 Stat. at Large, p. 785.) At this time the pay of a private was five dollars per month. On December 12, 1812, Congress increased the pay of a private to *eight dollars* per month, and, although the law made no provision for any increase in officer's pay, they were nevertheless paid the increase for each servant allowed by regulations, as provided in the law last quoted. (2 Stat. at Large, p. 788.)

April 24, 1816, Congress again re-enacted this provision, and this is the last expression of the legislative will we have found enacted into law. The section reads:

"That none except company officers shall be allowed to take, as servants or waiters, soldiers of the army, and *that all officers be allowed, for each private servant actually kept in service, not exceeding the number authorized by existing regulations, the pay, rations, and clothing of a private soldier, or money in lieu thereof.*" (3 Stat. at Large, 299.)

By general order of War Department July 8, 1816, and by Army Regulations, officers were allowed servants as follows:

Major general, 4; brigadier general, 3; colonel, lieutenant colonel, and major, 2; and captain and lieutenant, 1 each. (Paymasters' Manual, p. 127, 1864; Army Regulations, p. 544, 1863.)

July 7, 1838, (5 Stat. at Large, p. 308,) Congress reduced the pay of privates from eight to seven dollars per month. The law is silent as to its effect upon officers; yet—the law of 1812 and 1816 governing—they were paid for their servants at the rate last fixed.

August 4, 1854, (10 Stat. at Large, p. 575, sec. 1,) Congress passed the following:

"The pay of the non-commissioned officers, musicians, and privates of the army of the United States shall be increased at the rate of *four dollars per month*, [making eleven,] and to continue until otherwise fixed by law."

The law is here silent, as in every act passed subsequently upon this subject, with regard to officers' pay; yet, as before, and in every instance since, they were paid, under the statutes above cited, for each servant, the rate fixed for privates.

The pay of the army continued thus till the rebellion broke out, and until August 6, 1861, (12 Stat. at Large, p. 326, sec. 1,) when Congress enacted as follows:

"The pay of privates in the regular army and volunteers in the service of the United States shall be *thirteen dollars per month* for three years from and after the passage of this act, and until otherwise fixed by law."

An examination of the law will show that here, as before, Congress saw no necessity for legislation upon the subject of increasing officers' pay, but, as before, regarded the legislation of 1812–1816, quite sufficient, and officers were accordingly paid this increase for each servant.

This law was applied to officers' pay until July 17, 1862, when, by special provision, Congress deprived officers of the

benefits of the increase of privates' pay from *eleven* to *thirteen*, a sfollows, (sec. 4, 12 Stat. at Large, p. 594:)

"That the first section of the act approved August 6, 1861 entitled 'An act to increase the pay of privates in the regular army and the volunteers in the service of the United States, and for other purposes,' shall not be so construed, after the passage of this act, as to increase the emoluments of the commissioned officers of the army."

We find here exhibited an unbroken chain of legislation on the same subject for over fifty years, without a single departure from the one principle which lies at the bottom of this action. Whenever the pay of the soldier has varied, (and the laws show this to have occurred frequently,) the officers' allowance for servants has uniformly varied with it, and officers have been so paid. (See Appendix.)

This fact should not be overlooked when we come to consider the effect of the last act quoted upon subsequent laws, under which we claim, and which, to complete the history we started out to give, are now stated:

The act of Congress approved June 20, 1864, provides as follows: "*Be it enacted*, &c., That on and after the first day of May, eighteen hundred and sixty four, and during the continuance of the present rebellion, the pay per month of non-commissioned officers and privates in the military service of the United States shall be as follows, viz: * * * privates of cavalry, artillery, and infantry, sixteen dollars."

The court will notice the same silence observed by the legislature as in all the former laws passed increasing privates' pay, so far as relates to the commutation of servants' pay to officers.

The language of the act is almost in the precise terms used in preceding statutes on this subject, and in every essential particular they are the same, except only as to the rate of pay fixed at the different periods.

Some paymasters commenced paying officers this increased allowance for servants, as they had hitherto done under similar statutes, but a doubt having arisen in the mind of the Second Comptroller of the Treasury as to the effect of the act of July 17, 1862, above given, upon this last law, paymasters were instructed not to pay this increased rate until the question could be settled. Written opinions, sustaining the construction we now urge, were given by the Paymaster General, the Adjutant General, the General-in-Chief, (Halleck,) and Hon. William Whiting, Solicitor of the War Department, the last two gentlemen ripe lawyers, both of whom have given much study to military law, and which

opinions were approved by the then Secretary of War, Mr. Stanton. (See Appendix to this argument.)

The Comptroller, however, did not feel at liberty to yield his ground. Congress meanwhile having adjourned, there was no course left for paymasters but to acquiesce, and pay officers under the law of 1854, giving them servants' pay at the rate of eleven dollars per month, until Congress could relieve the Comptroller's doubts by an explanatory act. This was done so soon as the matter was brought to the attention of Congress, as follows, where it is declared "That the measure of allowance for pay for an officer's servant *is* the pay of a private soldier as fixed by law at the time." (13 Stat. at Large, p. 487.)

There was no longer any doubt in the minds of any of the Government officials, and officers were paid thenceforward, without additional legislation, at sixteen dollars per month for each servant kept by them, but the Comptroller still declined the responsibility of allowing pay at that rate from May 1, 1864, to March 3, 1865.

This is briefly the history of legislation touching the case up to the time this suit was brought. We have seen that from the earliest time to the present, when Congress has been called upon to change the pay of the private soldier to a higher or lower rate, the officer's allowance for servants has kept pace with the pay of a private, in every instance, by operation of the acts passed in 1812 and 1816, without any legislation whatever other than the rule then and there laid down; that without additional legislation officers were thus paid during the war of 1812, the Mexican war, and at the beginning of the late rebellion, and have been thus paid to the present, except during the period the law of July 17, 1862, was in force.

After this cause was begun, and a general demurrer filed by the solicitor for the United States, presenting all the law questions involved at that time, and after the demurrer had been argued and over-ruled by the court, Congress passed the following law:

"SEC. 3. *And be it further enacted*, That the act entitled an 'Act to increase the pay of soldiers in the United States army, and for other purposes,' approved June 20, 1864, shall not be so construed as to increase the emoluments of the commissioned officers of the army at the date of its passage; and the first section of an act entitled 'An act to amend the several acts heretofore passed to provide for the enrolling and calling out the national forces, and for other purposes,'

approved March 3, 1865, was not intended to be retrospective or retroactive in its operation, and shall not be so construed." Approved March 2, 1867. (13 Stat. at Large, 435.)

The proofs were completed, and the cause came on to be heard after the last-mentioned act passed, and upon full argument the court rendered judgment for the plaintiff (defendant here) for the amount claimed in his petition. This being one of a class of cases of some importance to the Government, as well as to numerous officers of the army, the Solicitor for the United States deemed it his duty to obtain the judgment of the highest judicial tribunal, and we are here accordingly to present the case of our client.

There will be no controversy, we suppose, upon any facts presented in the findings of the court below. Having, then, placed before your honors the history of the case, and the statutes bearing upon it, we will address ourselves at once to the principles of law involved.

In discussing this case, we shall leave out of view at this time the act of March 2, 1867, reserving its examination for another place in the argument.

At the hearing below on the demurrer, (before the act of 1867 was passed,) the solicitor admitted, in his printed brief, when speaking of the several laws enumerated and their effect, that our claim would not be denied, were it not for the act of July 17, 1862. As there was then no other possible defence for the Government, and as there is now no other defence, save that which may be set up under the act of 1867, (hereafter to be noticed,) we will present the argument as at that time used.

We are now to inquire—

1. What was the intention of Congress in passing the act of July 17, 1862?

2. Was the act of June 20, 1864, (increasing the pay of the army from May 1st to sixteen dollars per month,) affected by the act of July 17, 1862?

3. What was the intention of Congress in passing the act of March 3, 1865, (declaring the measure of allowance for pay of an officer's servant to be the pay of a private soldier as fixed by law at the time,) and what effect has it in determining the case before you?

1. A cursory reading of the fourth section of the act of July 17, 1862, will show that its only intent or purpose was a limitation of the act of August 6, 1861, so far as that law might work an increase of officers' pay. It is confined in its operation to a single section, and addresses itself to a

particular class of persons therein benefitted. It leaves the section intact as to private soldiers' pay, but repeals the section wholly as it applies to officers. It revived the act of August 4, 1854, so far as to furnish a measure of allowance for officers' servants, but said this measure shall not be increased by virtue of the section in question.

In other words, the 37th Congress, at its first session, increased the pay of the army from *eleven* to *thirteen* dollars per month, and, at the same time, increased the pay of officers' servants to that extent. At its second session, the same Congress said, "We will not give the officers of the army the benefit of this increased pay to privates; they shall only receive, under this law, *eleven* dollars per month for their servants." So long as this restrictive act of July 17, 1862, remained, it had simply this effect upon officers' pay, and only this. The legislative will could not be more clearly expressed to limit its action, as we have stated, and we cannot even torture the language into a wider meaning. No rule or law existing prior to the act of August 6, 1861, was repealed, and no attempt made to guide or restrict future legislation.

But the solicitor attempts to give this act a prospective application, and urges that it also restricts the subsequent acts of Congress.

This brings us to notice—

2. The effect the act in question had upon the law of June 20, 1864, (increasing the pay of the army to sixteen dollars per month.)

It is said by the learned counsel for the Government that the restrictive "act of July 17, 1862, is as much a limitation on the provisions of the act of June 20, 1864, as on the act of August 6, 1861," and he gravely insists that, "while the first section of the act of August 6, 1861, was *repealed* by the act of June 20, 1864, the fourth section of the act of July, 1862, remained in full force." This is a plain *non sequitur*. Besides, we insist that the solicitor is greatly mistaken in both of these propositions. Let us see.

The act of August, 1861, was *repealed* by the act of June 20, 1864. True. Now the act of July 17, 1862, was passed, as its language plainly says, to deprive officers of the benefits of this same act of August 6, 1861, which the solicitor says is no longer a law. Certainly, if no longer a law, all laws amendatory, not saved by a repealing act, die with it. The act of July 17, 1862, was passed for the sole purpose of destroying the act of August 6, 1861, so far as it applied

to officers. The act of June 20, 1864, repealed the act of August 6, 1861, altogether, and yet, having been twice destroyed, the solicitor finds life enough remaining in it to impart vitality to a law that became obsolete and nugatory with it. Not only this, but he interpolates it into the act of June 20, 1864, and makes it perform the same unfriendly office which it had two years previously performed. This facility for perpetuating, as well as construing, statutes, we are not quite willing to accede to. We say the moment the act of August 6, 1861, ceased to be a law, the act of July 17, 1862, ceased also.

Let us look a moment, in this connection, at the repealing clause of the act of June 20, 1864. It reads:

"SEC. 12. *And be it further enacted, That all laws and parts of laws inconsistent with the provisions of this act are hereby repealed.*"

Under the operation of this clause every act passed prior to the act of June 20, 1864, relating to soldiers' pay, was repealed, for they are all inconsistent with this. Now as the officers' servants' pay is by law to be determined by the amount paid privates, where can we go, except to this act of June 20, 1864, to ascertain the officers' allowance? The act of April 24, 1816, declares "that all officers shall be allowed for each private servant, &c., the pay of a private soldier." The pay of the private soldier was, on the 20th of June, 1864, fixed by law at sixteen dollars per month. These two laws were then and are now the only ones on the subject remaining which were at all consistent with each other. Every other statute was repealed, as we have seen. How, then, can this defunct section, passed in July, 1862, be made to hound the steps of officers whom a generous Congress relieved from its jaws?

But the solicitor says that these two acts *may* consistently stand together. Admit it, and what then? You cannot conclude that from that fact alone both must be merged into one law. We cannot, however, admit even this much. The act of July 17, 1862, drew all its life from the act of August 6, 1861; and when Congress cut down the latter, all its branches fell with it. This seems to us axiomatic. It must be borne in mind that this law of June 20, 1864, was passed by a different Congress two years after the act of July 17, 1862. They must be presumed to have known that by increasing the pay of privates they increased the allowance of officers to that extent, and nothing but express legislation to the contrary, made at the time, or susequently, could take

from the law that effect. Yet they passed no such law, enacted no limitation, but on the contrary expressly repealed all laws and parts of laws inconsistent with that which they then passed. Surely nothing can be plainer.

But suppose for a moment that the very singular position taken by the solicitor be true, and that the act of June 20, 1864, while it repealed the first section of the act of August 6, 1861, allowed the fourth section of the act of July 17, 1862, to remain in full force, what barrier does it raise to our recovery? The solicitor says:

"The act of July 17, 1862, is as much a limitation on the provisions of the act of June 20, 1864, as on the act of August 6, 1861."

This is serious indeed, if true; but we cannot give to this statute any such application.

There are certain well-established rules of construction which ought to have checked the learned counsel before proclaiming so broad a proposition. The court will pardon a reference to some of these.

Vattel says:

"It is the first general maxim of interpretation that it is not allowable to interpret what has no need of interpretation." (Book 2, ch. 17, sec. 263.)

Puffendorf says:

"If the words of the law express clearly the sense and intention, we must hold to that." (Sedgwick on Stat. Con., 295.)

"When we meet with obscurity in a statute we are to consider what probably were the ideas of those who drew the act, and to interpret it accordingly. Under this rule a clause is to be interpreted in the utmost latitude which the strict and appropriate meaning of the words will admit of, when, from the language used and the context and purview of the act, it is apparent that the framers of the act had in view everything which the words in their strict and appropriate meaning comprehend."

"But it must be interpreted in a more limited sense when from the same sources it appears that the Legislature did not mean to extend it to all cases, and everything which might be included within the strict propriety of the terms used." (Sedgwick, 629; Vattel, book 2, ch. 1, sec. 270.)

The section under consideration is as plain and direct, and accomplishes its purposes as certainly as the English language is capable of doing. There is not a vague or obscure spot in it. It goes straight to the first section of the act of

August, '61, and says: "*This section* shall not be so construed, after the passage of this act, as to increase the emoluments of the commissioned officers." That is all there is in its language. We find "the words of the law express clearly the sense and intention of the Legislature," in which case Sedgwick, and all other writers, say, "We must hold to that." We find, upon examining the sources pointed out by authors, "that the Legislature did not mean to extend it to all cases, and to everything which might be included within the strict propriety of the terms used." Are we not then bound to limit it accordingly?

Domat, in his Civil Law, p. 13, vol. 16, says: "If any law or custom happens to be established upon particular considerations contrary to other rules or to the general law, *it ought not to be drawn to any consequences beyond the cases which the words of the law mark expressly.*" And Sedgwick says, 651: "A court of law will not make any construction contrary to the express letter of the statute."

We have seen that for over fifty years, and to the present time, it has been the general law to pay officers for their servants the same that was paid soldiers, and never has there been a deviation from this rule except the single instance now being noticed. If Congress had intended interfering with this general law they would have said so. On the contrary, they were careful not even to mention the general law, lest by implication it might be disturbed, and officers of the army injured beyond the avowed intent of the law.

If there is any reason or strength in the rules laid down by the authors above quoted, it would be a gross violation of these to use the act of July 17, 1862, to limit the act of June 20, 1864. To do this, you must strike out all that part referring to the law of August 6, 1861, and insert in lieu thereof the act of June 20, 1864; and even then it would lack any force until you changed its date to correspond with or make it subsequent to the act of which it would then be amendatory.

A rule is given by Best, C. J., (5th Bingham, p. 180,) directly applicable to this case: "Where a general intention is expressed, and the act expresses also a particular intention incompatible with the general intention, the particular intention is to be considered an exception."

The general intention of Congress in this case was to increase the pay of privates, both in 1861 and 1864, and at the same time to apply the general law on the subject of officers' servants.

The act of July 17, 1862, was a *particular intention, incompatible with the general intention*, and was an exception applicable only to the law it was passed to affect, viz: the act of August 6, 1861.

Again, we find Mr. Sedgwick (p. 295) speaking as follows: "Where there is no obscurity in the effect of the laws and the effect aimed at by the legislature, we are not permitted to inquire into the motives of the legislature in order to defeat the law itself; *a fortiori* any law subsequently passed on the same subject."

Vattel says: "It is a dangerous abuse to go without necessity in search of motives and uncertain views in order to correct, restrict, or extend the meaning of a law which is itself sufficiently clear, and carries no absurdity on the face of it." (Vattel, sec. 263.)

When the language of the statute is clear, it is not for the court to say it embraces cases not described, because no reason is seen why they were not included. (Dunn *vs.* Reid, 10 P., 524.)

Now, before this defendant can be defeated in his suit, you must in effect say: "Whereas, upon an examination of the act of July 17, 1862, wherein Congress enacted 'that the first section of an act approved August 6, 1861, entitled, &c., shall not be so construed, after the passage of this act, as to increase the emoluments of the commissioned officers of the army,' we are of opinion that it was in the minds of Congress to place a restriction upon all statutes thereafter to be passed increasing the pay of private soldiers; and, although no such intention is expressed, neither is it deducible from the language used, yet believing some such motive to have governed Congress, (however much our opinion conflicts with well-established rules of statutory construction,) we nevertheless, as a court of justice, feel bound to decree against this claimant."

We cannot imagine this court enacting such a travesty upon the law.

If it were permissible, we could cite the court many reasons that operated on the minds of the 37th Congress, legislating at an early period of the war, which ceased to have any weight with the 38th Congress, when the last act was passed to which we refer. But we are precluded from inquiring into these reasons and motives by the plainest maxims of construction. The legislative intent is too clearly expressed to warrant any exploration of *probable* motives. We have, however, taken the liberty to append to this argument the

opinions heretofore referred to, (written by distinguished officers of the Government,) which we trust the court will not wholly overlook. In these will be found some of the reasons enumerated that may or may not have actuated Congress.

Again, the solicitor intimates that the laws of August 6, 1861, July 17, 1862, and June 20, 1864, must be considered together; in other words, they must be construed as *in pari materia*.

It is true that, if we were endeavoring to ascertain in what particular the pay of officers is affected by the acts of August 6, 1861, and June 20, 1864, which simply increase the pay of privates, we would be compelled to consult prior laws on the same subject, which give to the officers, for their servants, the pay of privates. But no such resort is necessary in determining the act of July 17, 1862, and to so examine it is in violation of well-settled principles.

We find in the books this rule laid down: "It is only in cases where the meaning of any particular section or clause of a statute is questioned or doubtful, from the language of the act, that it is proper to look into other statutes *in pari materia* to ascertain such intent; for if the language be clear and explicit, so as to leave no doubt upon the mind as to what was such intent, then and in such a case there is no room for construction; nor is there in such case any need of such resort. (Sedgwick, 759, and authors generally upon this doctrine.)

We invite the Court, then, to apply this rule as far as it is applicable, and are assured that, in the light of the authorities, the act of June 20, 1864, will be found to embrace within its purview the meritorious class for whom we plead.

We have given this division of the argument a more lengthy examination than was our intention, for the reason that the solicitor has greatly relieved us elsewhere by admitting that his only defence lies here and in the act of March 2, 1867.

Without continuing the examination further in this connection, we shall only add, if it be true, as we claim, that the act of July 17, 1862, clearly conveys the legislative intent to limit the act of August 6, 1861, and does not in words go beyond this, then are you precluded from giving it any other construction. In further support of this view, we only cite one other authority.

This court has held "that where the law is plain and unambiguous, whether it be expressed in general or limited terms, the legislature must be interpreted to mean what it

has plainly expressed, and consequently no room is left for construction. (7 Cranch, 52.)

The learned solicitor has attached more or less importance to the act of March 3, 1865, (the last law passed by Congress on this subject,) which brings us to notice,

3. What was the intention of Congress in passing this act, and what effect has it in determining the question before you?

We are told by the counsel for the Government that this act of March 3, 1865, has recognized the construction he places upon the act of July 17, 1862, and that it was clearly designed to repeal that law.

We think the counsel clearly misapprehends the act of March 3, 1865. There is nothing in it which recognizes the existence of the act of July 17, 1862, nor is there anything in it which bears the least semblance to a repealing act.

The language is peculiar. It reads:

"The measure of allowance for an officer's servant *is* the pay of a soldier as fixed by law at the time."

We take the position that this act adds no strength to the law of June 20, 1864, enacts nothing new, but is simply *declaratory* of what the law already was. It cuts no figure in this case necessarily, for you will have determined our fate before you reach it in your researches. It may not be devoid of instruction, however, to notice it a moment.

First, then, the act is entitled an act "*declaring and defining the meaning of the law* in regard to officers' servants;" second, it does not enact that *hereafter* "the measure of allowance for pay for an officer's servant," &c., *shall be*, &c.; it says this measure "*is*" so and so; further, it does not say this measure "*is* the pay of a private as fixed by law," of the date of the passage of the explanatory act, for Congress did not then fix the pay of a private; nor did the act say this measure *is* the pay of a private as shall *hereafter* be fixed by Congress, for that would not only be bad grammar, but it would be a contradiction of terms perfectly meaningless. But the act does say, "the measure of allowance for pay for an officer's servant *is* the pay of a private as fixed by law *at the time*"—what time, we ask? If the statute has any application at all, it must refer to some law in existence defining the pay of a private soldier. The only law then in force was the law of June 20, 1864. All others were repealed by that act. We find, then, that if this law has any effect it relieves the question under discussion of much difficulty, for it is a plain

declaration of Congress that the meaning of the act of July 17, 1862, had been and was still being grossly perverted.

There is no new thing attempted to be introduced by this declaratory act. Every feature of it was enacted into law over fifty years before, and the law then passed stands unrepealed upon the statute books to-day.

We have seen what rendered this declaratory act necessary. Congress was asked to do first, what this court is now asked to do—namely, to say what was meant by the law of June 20, 1864.

The officers of the army were being made to suffer by the construction given the law by the Comptroller, and by this construction paymasters had to be guided.

The matter was brought to the notice of the House Military Committee, and by its chairman, General Schenck, the first section of the law of March 3, 1865, was at once introduced in the form of a joint resolution, "declaring and defining the meaning of the law in regard to officers' servants."

I read from the Congressional Globe, p. 907, vol. 55, 2d sess. 38th Congress:

"OFFICERS' SERVANTS.

"*Mr. Schenck* also, from the same committee, reported a joint resolution declaring and defining the law in relation to officers' servants; which was read a first and second time.

"The joint resolution declares the meaning of all provisions of law relating to soldiers employed by officers as servants to be, that for every soldier thus employed by any officer, there shall be deducted from the monthly pay of such officer the full monthly pay and allowances of the soldier so employed." * * * * "*That the measure of allowance for pay to officers' servants is the pay of a private soldier, &c.*

"*Mr. Schenck* moved the previous question on the engrossment and third reading of the joint resolution; the previous question prevailed, the bill engrossed, read third time, and passed."

The resolution was passed on the day of its introduction, and seems to have been so well understood that the Journals of Congress show no discussion and no explanation by members.

The resolution went to the Senate, and seems there to have been well understood, and was acquiesced in, for we can find no objection made to it, and it was not in any particular changed, but it was made the pack-horse for a number

of sections on various subjects, and sent back to the House thus amended.

The court will indulge us again while we give an extract (and all we can find that will enlighten us,) from the House Journals, when the subject came again before it. I read from the Congressional Globe, p. 1398, vol. 55:

"MILITARY MATTERS.

"*The Speaker.* When the hour of one o'clock arrived to-day, fixed for the consideration of the special order, the gentleman from Ohio [Mr. Schenck] had the floor upon the joint resolution (H. R. No. 170) declaring and defining the meaning of the law in regard to officers' servants, with an amendment of the Senate, and amendments to the amendment reported by the Committee on Military Affairs.

"*Mr. Schenck.* Mr. Speaker, this joint resolution now before the House is an illustration of how a small ball in the beginning, rolling back and forth between the two Houses, may at length acquire formidable dimensions. Here was a joint resolution which passed this House, regulating the pay of officers' servants, *declaring what the law is and how it is to be construed in relation to that matter.* The joint resolution went to the Senate, and the Senate, despairing of getting through certain measures between the two Houses, ingrafted upon the joint resolution, as a substitute for the one single section contained therein, an amendment embracing thirteen sections upon a variety of subjects." * * *

"As a first amendment of this substitute, *the Senate adopted the very joint resolution which we sent to them.* It has already been agreed to by the House; it is unnecessary, therefore, for me to comment upon that."

We have thus given all we could learn which would aid this examination, not that the act of March 3, 1865, can in any way bear directly upon your inquiry, but in the hope that such examination might, in some degree, help to determine whether Congress intended in the act of June 20, 1864, to give the officers of the army the benefits of the increase of privates' pay.

The solicitor says, "if the construction which the claimant places upon this last-named act of Congress shall be sustained, then there was no necessity for the passage of the act of March 3, 1865." This is precisely what we insist upon—*there was no necessity for this act.* But, from that fact, are we to ascribe to it greater power than it would possess if there had been a necessity for it?

This is not the first instance where Congress has been called upon to make clear a law which had not been administered according to its intent; and it will not be a strange result, nor in any sense a violation of legal principles, if we find this court declaring that the law of June 20, 1864, had some force and effect prior to March 3, 1865.

We might add that the doctrine or rule of construing statutes *in pari materia* applies directly here. This act of March 3, 1865, establishes a measure of allowance which it is impossible to determine the value of without resort to the act of June 20, 1864, and the act of April 24, 1816; and the court will perceive, when thus considered, that the act of April 24, 1816, clearly indicates what the *measure of allowance* is, and has been since that time, while the act of June 20, 1864, tells us just what *fills* that measure, thus leaving the act of March 3, 1865, without any office whatever to perform, as we just before stated.

We conclude this branch of the argument with an extract from the opinion of the court below.

"LORING, J.—The first section of the act of August 6, 1861, is as follows: 'That the pay of the privates in the regular army, and volunteers in the service of the United States, shall be thirteen dollars per month for three years from and after the passage of this act, until otherwise fixed by law.'

"The fourth section of the act of July 17, 1862, is as follows: 'That the first section of the act approved August 6, 1861, &c., shall not be so construed after the passage of this act as to increase the emoluments of the commissioned officers of the army.'

"Now, the fourth section of the act of 1862 repeals nothing and construes nothing. It repeals nothing, because its operation is by its terms confined to the first section of the act of 1861, and that leaves all preceding acts untouched. It construes nothing, for it leaves the first section of the act of 1861 to operate according to its terms on the only subject to which it relates, the pay of private soldiers, which it makes thirteen dollars per month; and the only effect of the fourth section of the act of 1862 is to bar the use of the first section of the act of 1861, as a measure of computing the pay of officers' servants. But when the first section of the act of 1861 was repealed, the bar necessarily ceased, because there was nothing left for it to act upon, for by its express terms it was confined to the first section of the act of 1861, and could not be applied to the act of 1864, which made the pay of private soldiers sixteen dollars per month.

"From that time, as before, the rate of servants' pay was, under the early acts just referred to, that of a private soldier; and as by the act of 1864, the amount of a private soldier's pay was sixteen dollars per month, that was also the amount which an officer was entitled to draw in money for each of his servants.

"If this result of the acts cited were doubtful, we think it would be clearly established by the act of March 3, 1865, which enacts: 'That the measure of allowance for pay of an officer's servant is the pay of a private soldier, as fixed by law at the time.' This, necessarily, means at the time the allowance is to be made, and it is, we think, a declaratory statute, construing the acts relating to the subject, and fixing imperatively, for judicial action, their result as above stated."

We come now to notice the act of March 2, 1867, (quoted above—13 Stat. at Large, p. 435.)

The court will perceive that this act renders further discussion necessary, and an examination involving grave constitutional questions.

How far can a subsequent Congress construe laws passed by a prior Congress? Can a subsequent Congress divest a citizen of a right vested by virtue of a law passed by a prior Congress? Has the Constitution clothed Congress with power to violate a solemn contract entered into by the Government and completed on the part of the citizen contractor? Shall a retrospective law, invading vested rights and in violation of the Constitution, be effectuated by the courts? Shall property of the citizen be taken for the public use without compensation and without due process of law? These are some of the questions that rush upon us in the consideration of this case, and these in part we shall endeavor to present at this time.

Were we pleading for the soldiery in a despotic county, where the will of the monarch is the law, its construction and enforcement, then would our case be hopeless; but happily our fortunes are cast where enlightenment and justice go hand in hand, and where, in the law's eye, the poorest citizen is the peer of the lawgiver.

Wisely, our fathers distributed the power of government instead of concentrating it. Three distinct, independent, and co-ordinate branches must sanction the edict that creates or destroys a right. One of these three—the executive—may, by two-thirds of the legislative branch of the Government, be overridden; but thanks to the wisdom of the great men who

gave us our Magna Charta, legislative power there stops. Into this court it cannot come. The humblest may, with the Constitution of his country, shield himself from all encroachment, and neither he nor his judges shall be intimidated or swerved from the right.

I. Under our system of government there are at least two unquestioned checks on legislative power, both of which are held by the judiciary.

The first limitation arises from the power of construction vested in the courts, and applies to all enacted law where the language is ambiguous or contradictory.

The second consists of the constitutional restrictions imposed upon the legislature by the people, the enforcement of which is confided entirely to the courts.

If the case at bar involved the right of Congress to take from a large class of citizens, without compensation, their hard and patriotically-earned wages, and no constitutional provision forbade it, and no ambiguity or contradiction in the law left the court any room for construction, we would stand here and ask you still, by the superior power of this court, to declare void the law that would rob those by whose breath the law-makers live.

Society, the law of God and nature, have placed bounds on legislative power. There are certain fundamental principles of right and justice which Congress cannot with impunity infringe; and in the light both of reason and authority courts may disregard and hold null and void laws that override these.

In an old case, decided before American law had a place in history, (Day *vs.* Savage, Hobart, 85,) it was said "An act of Parliament made against naturall eqitie is void in itself." In a case where a physician was arrested for a fine imposed by the College of Doctors, Lord Coke said: "In many cases the common law will control acts of Parliament and adjudge them to be utterly void; for when an act of Parliament is against common right, the common law controls it and adjudges such act to be void."

What is the common law but the decisions of courts prescribing certain rules of conduct? Are the courts of this day less enlightened or less disposed to deal justly?

Lord Holt has quaintly said, in speaking of parliamentary omnipotence, "that it may do several things that look pretty odd; it can make Malta in Europe, and can make a woman mayor or justice of the peace; but it cannot change the laws

of nature so as to make a man a woman or a woman a man." (Dwarris, p. 523.)

Later, Parliament assumed and held transcendent and absolute power, and Mr. Blackstone wrote: "So long as the English Constitution lasts, we may venture to affirm that the power of Parliament is absolute and without control." (Bl. Com., book 1, ch. 2.) And again: "No court has power to defeat the intent of the legislature when couched in such evident and express words as to leave no doubt whether it was the intent of the legislature or no."

In this country, however, the doctrine of the earlier English decisions is adhered to, denying any despotic or arbitrary authority in the legislature, and asserting an inherent power in the judiciary, independently of constitutional provisions, to annul a legislative enactment considered to be contrary to the fundamental principles of natural justice.

In an early case in New York, before the State constitution prohibited the taking of property for public use without just compensation, where the canal commissioners had been authorized to take land, but no provision had been made for compensation, the court said that the constitutional provision *was only declaratory of a great fundamental principle of government, and that any law violating that principle would be deemed a nullity, as against natural justice and right.* (Rogers *vs.* Bradshaw, 20 J. R., 735. See also People *vs.* Platt, 17 J. R., 195.)

Mr. Chancellor Walworth, in Varick *vs.* Smith, 5 Paige, 137, fully sustains this opinion. So also Mr. Justice Barculo, in People *vs.* Supervisors of Westchester, 4 Barb., 64, 74.) And again, Benson *vs.* Mayor of New York, (10 Barb., 223.) He in this last case said: "*The rights of parties rested not merely upon the Constiiution, but upon the great principles of eternal justice, which lie at the foundation of all free Governments.*" (See also People *vs.* Edmonds, 15 Barb., 529; Goshen *vs.* Stodington, 4 Conn., 209.)

In this last case, Hosmer, J., says: "If a law were made, without any cause, to deprive a person of his property, who would not question its legality, or who would carry it into effect?" Yet we have here a law without cause taking the property of citizens and placing it in the public coffer.

Mr. Justice Story, in this court, said; "The fundamental maxims of a free Government seem to require that the rights of personal liberty and property should be held sacred. No court of justice in this country would be warranted in assuming that the power to violate and disregard them (a

power so repugnant to the common principles of justice and civil liberty) lurked under any general grant of legislative authority, or ought to be inferred from any general expression of the will of the people." (Wilkenson *vs.* Leland, 2 Peters, 627.)

Chase, J., said, in Calder *vs.* Bull, 3 Dall., 386: "An act of the legislature (for I cannot call it a law) contrary to the great first principle of the social compact cannot be considered a rightful exercise of legislative authority."

American text writers and American courts abound in decisions and principles to the same effect. We have found no authority with the temerity to claim an inherent or implied right in Congress or a State legislature to violate principles of natural right and justice. In the case at bar, Congress attempts to take from a class of citizens that which it once gave them as wages for services rendered the Government. No compensation is offered them, no public necessity urged as a reason for the act.

On the high seas this would be piracy. If we were permitted to name the offence as it is pronounced in the criminal code, we would call it plain grand larceny. Sirs, if the entire Constitution of our country were swept away, the preamble alone would give you power to interpose for the protection of our client. What does it say? "We, the people of the United States, in order to *establish justice*, &c., do ordain," &c.

The whole history of enlightened jurisprudence sustains us in urging that the very object and purpose of our form of government are to secure all who seek refuge under its ægis full and ample protection in the enjoyment of life, liberty, and property; and it matters not whether a citizen is deprived of these by the Government itself or by an individual, you stand before the world his avowed and acknowledged protector. We have listened in vain to the learned opinions of this court, if we have mistaken in them a deep conviction that it is the policy of justly free Governments to render equal and exact justice to all, and restrain wrong and oppression by whomsoever committed.

We have said and, we think, fully shown that, had Congress, in the most direct manner, sought to destroy the rights of our client, it would be the duty of this court to hold the law void.

Suppose the act of March 2, 1867, repealed the act of June 20, 1864, altogether; what then would be the effect?

We answer: Where a right in the nature of a contract

has vested under the original statute, then the repeal does not disturb it. (Sedgwick, p. 133; Fletcher *vs.* Peck, 6 Cranch, 87; Gillmore *vs.* Shooter's Ex'or, 2 Mod., 310; Couch, q. t. *vs.* Jeffries, 4 Burr, 2460–2; Churchill *vs.* Crease, 2 Moore & Payne, 415; 5 Bing., 177, S. C.; Terrington *vs.* Hargreaves, 3 Moore & Payne, 137, 143; 5 Bing., 489, S. C.; Butler *vs.* Palmer, 1 Hill, 324.)

It has been held in many instances that statutes creating new exceptions shall be construed as not to affect rights of action which have vested under the original law and existing at the time of the modifying statute; *a fortiori* must the right itself remain inviolate. (4 Serg., & Rawle, 401; 3 *Ibid*, 590, 599; 1 Hill, 324.)

The line of demarcation between the legislature and the courts has been drawn by the clearest and greatest minds this nation has produced. Our judicial literature is unmistakable on this point. This is an age of enlightened freedom, not of relapse into Roman autocracy. The Emperor Justinian, in a rescript to his prefect, Demosthenes, says:

"*We* declare the imperial construction of laws, whether made on petition or in suits, to be absolute and final; for if the sovereign alone can make laws, he alone should interpret them. Why else, when questions have arisen in litigated controversies, have they been brought to us; and why, too, have judicial doubts reached our ears, if interpretation does not proceed from us alone? Who indeed is competent to solve the enigmas of the law, except him to whom alone the power of legislation is conceded? These absurd cavilings are therefore to cease, and the Emperor to be regarded the only interpreter, as he is the only maker, of laws."

This, sirs, is the dictatorial language of a Roman Emperor, which our Congress shall never, while liberty survives, be allowed to utter to the American people, and yet it has been paraphrased and enacted into what comes to you now as law in this act of 1867.

But, may it please the court, Congress have not, in the act before us, put themselves in the attitude of repudiators, nor do we think that patriotic body ever intended to do so. Their sin has been of ignorance and omission rather than of commission.

The charity of the soldiery is broad enough to forgive them, for they knew not what they did. Besides, may it please your honors, the soldiery of this country can never forget the open-handed generosity evinced by the American Congress during the terrible struggles of the last five years,

nor can any hasty or inconsiderate legislation now wipe out the record of that memorable period. It is these convictions that make so inscrutable the legislation now being considered.

It may be safely asserted that not three Senators nor one dozen members of the House can tell you to-day what they did in this regard, or why they did it. The act now under discussion was introduced into and passed by the Senate without the interposition of a committee, by being injected as a separate section into a pending bill on another subject. Not one word of explanation was made by a single Senator, and not one vote, aye or no, was spoken; but under the rule of "silence consents," this section passed, and thus were imperilled the rights of many widows, orphans, and brave survivors of the fiercest conflict ever witnessed on any continent—a conflict, too, avowedly to secure to us and to them the perpetuation of a free Government, where the lowliest of the realm may demand in the courts of the country the full meed of justice vouchsafed by our common Constitution. The bill referred to went to the House, and was there rejected; a committee of conference was asked by the Senate and ordered by both Houses. The House committee yielded their objection to the action in question, while the Senate committee yielded their objection to other portions of the bill, and thus it became a law, the House committee felicitating themselves that they had obtained all they wanted by yielding to the passage of a section that could amount to nothing. We feel bound to give this history of the section, not that it can affect the question, but as illustrating the wisdom of those benign principles enunciated by the great lights already quoted, and to show how farcical would be a court trial if the judiciary were estopped from controlling to a just end legislation so partial and ill-advised. What would become of the credit of the nation, and how long would individual rights live, if no power could check these legislative bargains and sales, this diplomacy of conference committees, in which grave men play at battledore with human rights?

We pass to the examination of this section in the light of other rules and principles of law, and where we shall find ourselves intrenched behind the Constitution of our country. The powerful arm of the legislature is impotent here; neither the storms of party strife nor the petty schemes of individuals can reach this high place of justice. Before entering fully upon the examination of constitutional ques-

tions, we beg the indulgence of the court while we refer to certain well-settled rules of statutory construction pertinent to the present inquiry.

II. We affirm that statutes will never be given a retrospective operation unless that intention is made manifest by express words; and if the intention be clear and explicit, it will not then be enforced if the law is in violation of rights vested, or impairs the obligations of contracts, or otherwise infringes the Constitution.

An examination of text writers, from the earliest to the present time, will show that in all ages retrospective laws have been condemned in the severest language.

Puffendorf says, "A law can be repealed by the law-giver, but the rights which have been acquired under it while it was in force do not thereby cease. It would be an absolute injustice to abolish with a law all the effects which it had produced."

Bacon says, "It is in general true that no statute is to have a retrospect beyond the time of its commencement."

The French code contains a positive provision that laws are made only for future cases, and can have no retrospective effect; and in some of the United States the same provisions are found. These maxims have found their way also into the Constitution of the United States, prohibiting the enactment of laws *ex post facto*, or impairing the obligations of contracts. The principle has been generally adhered to in England and in this country.

The statute of frauds, 29 Car., 11, c. 3, enacted that on and after the 24th June, 1677, no action should be brought on any parol promise. A suit was brought after that time on a promise made in 1676, but it was held that the statute was not to receive a retrospective effect, the court saying "it would be a great mischief to explain it otherwise, to annul all promises by parol before that time, upon which men trusted and depended, reckoning them good and valid in law." (Helmore *vs.* Shuter, 2 Show., 17.)

There are many striking similarities between the case cited and the one at bar, which must occur to the court. (See also Couch *q. tam vs.* Jeffries, 4 Burr, 2460.)

A striking parallel is also found in 8 and 9 Vic., c. 109, 8 Aug., 1845, wherein it was enacted that all contracts and agreements by way of wagering or gaming *shall be null and void*, and that no suit shall be brought or *maintained* in *any court upon any wager*.

Under this statute, thus clear in its intention seemingly to

destroy all gaming contracts, it was held that it was not to receive a retroactive construction so as to defeat a suit on a wager commenced before the statute passed. (Moon *vs.* Durden, 2 Eoch., 22, and Edmonds *vs.* Hawley, 6 M. and W., 285, and Ashburnham, 2 Atk., 36.)

The section we are discussing is in no sense so directly applicable to past undertakings. Under our Government the legislature is not supreme, as it is in England. We say, then, this exposition of the principle governing retroactive laws, as expounded by the English courts, is specially significant in this inquiry.

This subject was clearly considered in the State of New York.

By a decision of the supreme court of that State, giving construction to an act concerning certain privileges which were given to prisoners, it was held that a return or recaption before suit would be no excuse to the sheriff in an action against him for an escape.

The Legislature, in consequence of this decision, passed an act (5 April, 1810, 33 sess., c. 187) declaring that a recaption before suit brought should be a good defence.

An action was brought against a sheriff for an escape, pending which the act was passed. It was urged by the defendant that the law should be held retroactive, and should operate to protect the sheriff; and it was further urged that the law was explanatory, and that if it was in any way competent for the Legislature to alter the law retrospectively, they had in this case done it.

There would, indeed, seem to be many reasons for giving such effect to this law, and some of the judges favored that view; but a majority of the court held that the plaintiff had a vested right of recovery; that the act was not expressly retroactive, and, if construed retrospectively, would operate unjustly, would defeat a suit commenced upon a right already vested, and thus mulct an innocent party into payment of costs, as well as deprive him of a right previously acquired under the existing law.

Thompson, J., remarked: "It may be generally said of retrospective laws, of every description, that they neither accord with sound legislation nor the fundamental principles of the social compact."

Kent, J., in the same case, remarked: "I think it can be shown that the act cannot be adjudged to operate either as a *new rule* for the government of a *past case*, or as interpreting a former statute for the direction of the courts, and I should

be unwilling to consider any act so intended, unless that intention was made manifest by express words, because it would be a violation of fundamental principles, which is never to be presumed." (Dash *vs.* Van Kluck, 7 J. R., 477; see this case cited in Wood *vs.* Oakley, 11 Paige, 400.)

It will be perceived that these opinions do not rest upon any distinction between the power of the legislature to interfere with pending suits and the right upon which those suits depend, but they rest upon the broad principle that that which has been once rightfully acquired under the law cannot be rightfully taken away by the power which gave it. It would be a singular justice, indeed, that would say to A, Your suit being commenced, shall not be disturbed; but to B, Your right being the same as A's, shall nevertheless be destroyed, because you have not entered suit.

In the same State it was more recently held to be a general rule that a statute affecting rights and liabilities should not be construed to act upon those already existing. (Johnson *vs.* Burrell, 2 Hill, 238; and see also Bailey *vs.* Mayor, &c., 7 Hill, 146; The People *vs.* Carnel, 2 Selden, 463.)

In Pennsylvania, a statute allowing a writ of error in cases where none lay before the passage of the law has been held not to apply to judgments obtained before the act passed.

Rogers, J., remarked: "My respect for the legislature is too great to allow me, for a single instant, to suppose that they designed so great a wrong as by a retrospective act to make right that which was clearly wrong." And he takes further and higher ground, such as we have already alluded to, and such as may apply further along in our argument.

"But granting," he says, "that intention to be *clearly expressed*, I have no hesitation in saying the act is unconstitutional and void. The legislature has no power, as has been frequently held, *to interfere with vested rights*. To give the property of A to B is clearly beyond legislative authority." (McCabe *vs.* Emerson, 6 Har. Penn. R., 111.)

We do not desire to weigh down this case with citations of authorities, nor do we feel at liberty to indulge a fear of trespassing upon your honor's patience, and in that omit anything that may aid your judgment to reach a right conclusion. We believe that a correct understanding of all the great interests here at stake can only be had by fully comprehending the enormity of the wrong here sought to be done.

We have already, we trust, sustained our views of retrospective legislation by copious authorities. Indeed, there can be but one opinion as to the injustice of this class of laws.

When statutes are prospective there can be no hardship in the maxim that ignorance excuses no one, for it is at least possible to know them. But when they act backwards, upon that which transpired before their existence, this maxim is cruel and inhuman, as it holds men responsible for knowing that which was not possible to be known. Retroactive laws are as absurd as unjust, as they involve the regulation of past conduct instead of prescribing rules for the future.

"Give a legislature," says Mr. Walker, in his American Law, "power to pass retroactive laws, and no one can be safe, since his whole past life is liable to be animadverted upon."

For such reasons as we have briefly given, this author further says: "*It is obvious that retroactive laws are only fit for tyrants to make and slaves to submit to.*" (Am. Law, p. 208.)*

Now, if the court please, let us look for a moment at the language of the law under consideration. It says: "The act entitled 'An act to increase the pay of soldiers in the United States army, and for other purposes,' approved June 20, 1864, shall not be so construed as to increase the emoluments of the commissioned officers of the army at the date of its passage," &c. The court will remember that the act of June 20, 1864, is the one by virtue of which officers' emoluments were increased, and upon which we base our claim. We hold that if any construction can possibly be given this act of March 2, 1867, so as to save the rights of those claiming under the act of June 20, 1864, it is the duty of this court so to construe it without regard to the question of its constitutionality, and this we claim in the light of the authorities cited. If the law is not retroactive in its nature we have nothing to contend against, for our claim is then admitted; if it is retroactive, then we ask the application of the principles of law already cited. That this act is in its

*An instructive case, and one directly in point, is Reiser *vs.* Wm. Penn Savings Fund Association, (3 Wright's Pa. R., 137,) where Lowrie, C. J., decides:

1. "The legislature has no power to direct the judiciary in the interpretation of acts of the assembly previously made, or require it to change an interpretation already put upon them. Such a mandate is unconstitutional and void."

2. "An arbitrary interpretation by one legislative body of an act of assembly passed by their predecessors, is not legal interpretation, but is a substitution of the language and meaning of the one for the other."

3. "An expository act of assembly is destitute of retroactive force, because it is an act of judicial power, and is in contravention of the ninth section of the ninth article of the Constitution."

The Chief Justice cites the language of Chief Justice Gibson, in Greenough *vs.* Greenough, 1 Jones, 494: "Every tyro or sciolist knows that it is the province of legislatures to enact, of the judiciary to expound, and the executive to enforce."

nature retrospective, if applicable to this case, there can be no doubt. A statute which takes away or impairs any vested right acquired under existing laws, or creates a new obligation, or imposes a new duty, or attaches a new disability in respect to transactions or considerations already past, is to be deemed retroactive. (Sedgwick on Stat. Const.. p. 188.)

We say this act of March 2, 1867, does not in such express and unmistakable terms convey an intention to take away rights vested under the law of June, 1864, as a court can be called upon to execute.

It may, with great propriety, and does, we think, limit the meaning of the act of June 20, 1864, so as to cut off the emoluments of officers in the future; but it does not *necessarily* reach back and cut off also the rightful claims of an officer who rendered the service required of him and was honorably disharged, and now claims his unpaid allowance under the law.

The language is almost precisely that used in the act of July 17, 1862, passed for the purpose of limiting the act of August 6, 1861, and which was never claimed to affect back pay due prior to the passage of the limiting act. True, in the act of July, 1862, the phrase "after the passage of this act" appears, but that clause only declares what the courts would hold to be presumed. All laws take effect after their passage unless otherwise provided. True, also, there is another clause peculiar to the act of March 2, 1867, not found in the act of July 17, 1862.

The act of March, 1867, says the act of June 20, 1864, "shall not be so construed as to increase the emoluments of the officers of the army *at the date of its passage*," the italicized clause not being in the law of 1862. This clause can only qualify emoluments, if it performs any office whatever, and cannot refer to officers in service June 20, 1864, and who are now out of the army; otherwise it would have said "shall not increase the emoluments of the officers of the army (in service on and after) the date of its passage." Indeed, this clause is a gratuitous and independent one, and may be expunged without changing the legal effect of the law.

Again, if it be insisted that the law reaches back to June, 1864, then must the Government bring suit against every officer who drew these emoluments after March 3, 1865, under the declaratory act of that date; for this law of March 2, 1867, is as much an attack upon that law as it is upon the law of June 20, 1864. We have already seen that the act of March

3, 1865, was not necessary to complete the right of officers to this increased pay under the law of June 20, 1864. We say, then, this act of March 2, 1867, if it receives at your hands a retroactive construction in the defeat of our claim, devolves upon the Government the odious duty of bringing suit against thousands of officers living, and the widows and orphans of the dead, for pay collected by the officer or his representative since March 3, 1865.

Again, the terms "officers of the army" cannot be held to mean *ex-officers* of the army, as the law does not require this stretch of meaning in order to make it harmonious in all its parts. The Second Comptroller of the Treasury, whose erroneous decision in this case has sent us here for redress, has recently given an opinion on this very point. By an act of March 4, 1867, Congress increased the pay of officers of the army thirty-three per cent. on their pay proper from July 1, 1866. The Comptroller holds, and properly, that the term officers of the army cannot mean ex-officers, and therefore he excludes from the benefit of this law all officers in commission since July, 1866, but who are not now in commission.

We say, then, this act has this meaning and nothing more: 1st. It applies to officers *now in the army*, and cannot, except by inference, which you are not permitted to indulge, be made to apply to this defendant, who is not an "officer of the army." 2d. It cuts off emoluments of officers *in the future*, but not those due prior to March 2, 1867.

The latter part of this section we dismiss as unworthy of notice. We assume that the act of March 3, 1865, cuts no figure in this case.

We ask here to quote again from the opinion of the court below:

Loring, J. "But the assistant solicitor objected, on the part of the United States, to this operation of the act of 1864, that the third section of the act of March 2, 1867, enacted as follows: 'That the act entitled "An act to increase the pay of soldiers in the United States army, and for other purposes," approved June 20, 1864, shall not be so construed as to increase the emoluments of the commissioned officers of the army at the date of its passage.' This clause, in form, directs as to the construction of the act of 1864, and to construe acts is the province of the judiciary. In The United States *vs.* Dickson, 15 P., 141, the Supreme Court of the United States decided that 'the judicial department must determine the construction of all laws involved in cases before them according to

their own views.' (Curtis's Dig., p. 104.) But it is also the duty of the judiciary to give to the acts of the legislature their intended practical operation, as far as that is possible, and we think it clear that the legislature intended to prevent the use of the statute of 1864 as a measure for computing the pay of officers' servants, and that the words of the clause cited are competent to effect that purpose from the date of its enactment. In the case of The Postmaster General *vs.* Early, (12 W., 148,) Chief Justice Marshall, delivering the opinion of the Supreme Court, said: 'A mistaken opinion of the legislature concerning the law does not make law. But if the mistake is manifested in words competent to make the law in future, we know of no principle which can deny them this effect. The legislature may pass a declaratory act which, though inoperative on the past, may act in future.' We think the clause quoted is such a declaratory act that it makes the law from its date to the extent we have attributed to it, *i. e.*, in preventing the use of the act of 1864 as a measure in computing the pay of officers' servants. But we think it is not to have any retrospective or retroactive effect, because such an operation of a statute, on rights vested by contract, conflicts with general rules and all judicial and legislative instincts. Mr. Dwarris says, (p. 548.) 'It is in the general true, (say the books,) that no statute is to have a retrospect beyond the time of its commencement, for the rule of law of Parliament is, that *nova constitutio futuris formam debet imponere, non praeteritis;* and not only is it the doctrine of the English law that a statute is not to have a retrospective effect, but it is also founded on the principles of general jurisprudence. A retroactive statute would partake in its character of the mischief of an *ex post facto* law as to all cases of crimes and penalties, and in matters relating to contracts or property would violate every sound principle.' And his rule as to retrospective construction of a statute is, (p. 541,) 'It will only be so construed when the words coerce the court to give the law an *ex post facto* operation.' There are no such words here, and the general rule that a statute takes effect from its date answers and overrules the objection made by the assistant solicitor."

But we are not yet done with the difficulty presented in attempting to give a retroactive effect to the law of March 2, 1867.

On the same day, memorable for having seen pass into law an act so sweepingly unjust, the same Congress enacted another law declaring that the *act of June* 20, 1864, *should remain in*

full force and effect for three years after the close of the rebellion, as follows:

"SEC. 2. *And be it further enacted*, That section one of the act entitled 'An act to increase the pay of soldiers in the United States army, and for other purposes,' approved June twenty, eighteen hundred and sixty-four, be, and the same is hereby, continued in full force and effect for three years from and after the close of the rebellion, as announced by the President of the United States by proclamation bearing date the twentieth day of August, eighteen hundred and sixty-six."

Approved March 2, 1867. (13 Stat. at Large, 422.)

In one law Congress continues to officers the benefit of the act of June 20, 1864, for three years after the rebellion. In the other law, and on the same day, they say officers shall not be benefitted by this law, and attempt to say that the widows and orphans of officers who died with back-pay due them under the law shall not receive it. We would appeal from the one law to the other, but for the fact that both seem to have passed at the same time, and we do not know, therefore, how or where to appeal.

Were it possible to determine which law was first a law, we would be somewhat relieved, as in that case the law last passed would possibly govern; but they seem to have become laws simultaneously. We say in this case you are bound to enforce that law which is most just, clear, and explicit, and which consists most with previous legislation on the same subject.

Here we find a warrant for wholly ignoring that act, which, if nursed into judicial life, would serve a very ungracious if not despicable work. Certainly we here have additional reason for urging that you cannot give a retroactive effect to the law.

We are told in a curious book (*Petyts jus Parliamentarium*) that by the ancient laws and customs of England, when any case of difficulty happened to arise in Westminster Hall, the judges adjourned such cases. *Propter difficultatem, usque ad proximum Parliamentum.*

Imagine your honors adjourning this honorable court and waiting upon Congress in joint session for enlightenment concerning the law passed by a previous Congress!

And yet pray tell us the difference between calling Congress as witnesses and allowing them to send you the act of March 2, 1867.

But if this court should hold that the act in question is not retroactive in such sense as to be held void under the principles of law we have endeavored to show should govern, and is not, therefore, on that account necessarily void; and if this court should further hold that the judicial power

ought not to be invoked to protect citizens from wrong and oppression without the Constitution of the United States so in terms or by necessary implication forbids the particular thing complained of, and that a former part of our argument on this point was needless, we find ourselves then at that point where we must look to the great charter of our liberties for refuge.

III. Here we invite your earnest and patient attention.

We believe there is not in that great chart a single guarantee, alluding immediately or remotely to the enjoyment of property by the citizen, which is not here violated. We believe that Congress might, with the same warrant, have enacted that every living officer of the late army, and the wives and children of the dead, shall, without trial by jury or other process of law, be imprisoned for the same period for which it is sought to deprive them of pay. Such an enactment would be more revolting, but it would not be a greater violation of the Constitution of our country.

We trust this is stating with sufficient strength the enormity of the wrong which it is your province to check.

We proceed to state the constitutional provisions plainly violated:

1. We hold that the clause of the Constitution prohibiting any State Legislature from passing laws impairing the obligations of contracts is in its spirit as binding upon Congress. True, this clause of the Constitution is said to apply only to the States, (see Curtis, C. C. R., Evans *vs.* Eaton,) but it by no means follows from this authority that Congress reserved to itself the right to impair contracts. No intimation to that effect is anywhere to be found in the whole range of American decisions. On the contrary, the books are full of decisions denying this right to dwell anywhere under our Government. There can be nowhere found any such expressed power granted to Congress, and surely a power to do wrong cannot be presumed or implied. Mr. Story says, in his work on the Constitution, section 1330: "The same general rights, duties, and limitations which the common law attaches to contracts of a similar character between private individuals are applied to the contracts of the Government." (12 Wheat. R., 559.) And this great expounder of the Constitution proceeds to show that the obligatory force of contracts does not rest so much upon positive declarations of the municipal

law as upon the general principles of natural or universal law, and he illustrates his meaning by showing that (at the time he wrote) although the United States were not suable, no one would doubt that their contracts are obligatory. (§§ 1381, 1382.)

"Bills of attainder, *ex post facto* laws, and laws impairing the obligations of contracts," wrote Mr. Madison, "are contrary to the first principles of the social compact and to every principle of sound legislation." (Federalist, No. 44.) Can this be true, and there remain among the implied powers of Congress a right to impair contracts? "Very properly," he continues, "therefore, have the Convention added this constitutional bulwark in favor of personal security and private rights."*

"An act of Congress repugnant to the Constitution cannot become the law of the land." (Marbury *vs.* Madison, 1 Cranch, 137.) It requires no very quick moral perception or learned legal mind to discover a most glaring repugnancy between an act of Congress repudiating its promise to pay its soldiers their well-earned wages and those great principles of justice which pervade our Constitution.

"The great object of the framers of the Constitution undoubtedly was to secure the inviolability of contracts. This principle was to be protected in whatever form it might be assailed. No enumeration was attempted of the modes by which contracts might be impaired. It would have been unwise to have made such an enumeration, since it might have been defective, and *the intention was to prohibit every mode or device for such purpose.* The prohibition was *universal.*" (Story on Const., section 1386; Sturges *vs.* Crowninshield, 4 Wheat., 199.) This is deemed sufficient to sustain our proposition, although on examination of all the leading cases argued in this court, where this question was involved, the same principles will be found fully supported.

It remains to notice in this connection whether there was a contract between the Government and the army officers. A contract, says Blackstone, is "an agreement upon sufficient consideration to do or not to do a particular thing." (2 Black. Com., 443.) Chief Justice Marshall, in Sturges *vs.*

*Mr. Madison associated laws *ex post facto* and impairing contracts with that most hated engine of power, bills of attainder, and he must have supposed all prohibited by the Constitution. This, it will be remembered, was before there was any provision in the Constitution against depriving citizens of property, as afterwards placed there by an amendment to the Constitution.

Crowninshield, gives the same definition, omitting the element of consideration. He says: "A contract is an agreement in which a party undertakes to do a particular thing." This definition is preferred by Metcalf, J., in an article on contracts. (American Jurist, vol. 20, p. 1.)

In the case before you, this defendant engaged to serve the Government for three years or during the war; his compensation was to be fixed by the Government. This compensation was ascertained in various ways by law, and became a part of the engagement. The officer agreed to render service, the Government to pay him therefor. The act of June 20, 1864, increased his allowance for each servant from eleven dollars to sixteen dollars. By the decision of a Government officer, never acquiesced in by the officer, this increased allowance was withheld, and for this he brings suit, pending which Congress passes an act saying that the law so increasing the officer's pay shall not be so construed. Can there be a plainer contract, or a plainer violation of it? It will not be contended that Congress may not increase or diminish the pay of the officer, changing even the law under which he rendered service, but Congress cannot say that those officers who rendered service under a particular law, and failed, from no fault of their own, to collect their arrears of pay, shall not receive such arrears.

The identical question here presented, was discussed in this court in the case of Butler *vs.* Comm. Pa., 10 Howard, 402.

Certain canal commissioners were appointed, during whose term of office their salary was reduced by the Legislature. The commissioners retained of the public money in their hands the difference between the salary under the law when elected and the subsequent act. The State sued them for this balance. This court, on appeal, held that it was not a violation of the Constitution prohibiting the impairing of contracts, for the reason that the State could rightfully control the subject of tenure of office as well as salary, &c. But the court say, Daniels, J.:

"*The promised compensation for services actually performed and accepted, during the continuance of the particular agency, may undoubtedly be claimed both upon principle of compact and of equity.*"

If the Government is to be held to the same rules which apply to individuals, there is no escape from holding it to the performance of its promise to pay officers this increased allowance. If A engages to work for B at a stipulated salary, and B afterwards, in consideration of A's valuable services,

or because of the inadequate salary first offered, or for any other reason, engage to pay A an additional salary, would any court of justice hold that B could afterwards repudiate his contract to pay A? If the Fortieth Congress, in some freak, should enact that the law passed years ago, fixing your honors' salary as judges, should not be construed to give you more than half the salary then fixed, and it so happened that you had been refused a portion of that old salary by some public officer, or had neglected to draw it, would any court hold that you could not recover that arrear of salary on the basis of the old law? What security would there be in dealing with a Government that could with impunity make and impair its contracts at will? Who could respect such a Government, or how long could it live? It would deserve to be outlawed among nations.

It does not relieve the Government by regarding this increase of salary as a grant, or as an executory or unperformed contract. The Constitution protects all contracts of whatever nature, and, as a grant is an *executed contract*, all must be alike protected. If this increase had been a mere gift, and never delivered, the Government might possibly repudiate it at a sacrifice of its self-respect; but it was not a gift; it was a promised increase of pay for work and labor done and to be done, accepted as such by the officer at the time, and, as has been seen, was so understood by the Government. Congressional enactments of this character are in themselves the highest species of contracts, and, when made, pass from the control of Congress and into the hands of the people for whose benefit made; and it is as absurd for the Thirty-Ninth Congress to undertake a construction of a law passed and contract made by the Thirty-Eighth Congress, in violation of rights vested, as it would be for them to resolve that the general appropriation act of the Thirty-Eighth Congress shall not be construed to warrant any payments made or to be made for the purposes mentioned, thereby overturning all payments made under it.

In commenting upon the great cases of Fletcher *vs.* Peck, and the Dartmouth College case, Mr. Sedgwick says: "These two decisions determined in the most favorable aspect, for rights vested by legislative action, that *all private rights of property created by virtue of a statute were protected by the Constitution, and this doctrine has been ever since the decision of the last-mentioned case considered the settled law of this Union.*" (Sedg. Const. Law, p. 625.)

Congress, at its last session, refused to rescind a contract with the Globe office, because of a fear to impair an implied contract, which it was thought was binding for two years. If Congress *must protect future contracts*, how can they *destroy past ones?* Why was there not some voice raised against the law here urged upon you as constitutional, which strikes much more directly at the nation's faith? It would be well for the country if legislators would study some of the profound opinions of this high court upon legislative restrictions and powers before enacting capricious and ill-digested laws in a sort of blind idea of retrenchment. If it be thought best to cut off vested rights, in order to provide means to pay increased salaries and sustain a depleted Treasury, let the burden fall equally; and if Congress desires to adopt the principle of paying no old debts, and allowing all new ones to become old, in Heaven's name let them so announce, and begin by omitting to draw their own increased salaries, and not by a blow at this class of creditors expose themselves to the just animadversions of everybody, and especially those whose claims this Government ought to delight to honor.

2. We claim that the act under consideration violates that clause of the Constitution which provides that "no person shall be * * deprived of life, liberty, or property without due process of law." (5th Amend. to Const.)

Here, perhaps, might have been said quite as appropriately all that has been hitherto said with regard to impairing contracts. There may exist a contract which cannot be regarded strictly as property, and as such not protected under the clause now being considered. We believe, if such case can be conceived, the Constitution is broad enough to cover it; else Mr. Madison was wrong in saying that "laws impairing the obligations of contracts are contrary to the first principles of the social compact." We preferred to avoid, as far as possible, any unnecessary distinctions with regard to what constitutes property. Besides we believed, and still believe, the spirit, if not the letter, of the clause just disposed of is plainly violated by the act of March 2, 1867. If it shall be held that the consideration of the clause relating to contracts is foreign to the subject, then we insist that the one now about to be examined is ample in its protection of our rights. We have here a full equivalent, and more than an equivalent, for that provision relating to contracts. Under the one clause States are forbidden to impair contracts; but so far as relates to their power to deprive citizens of property, no prohibition whatever was placed upon them. This was left to the regulation of the States themselves. But our fathers were not willing to leave the citizen of the United States thus at the

mercy of Congress. The framers of the Constitution had in many ways indirectly and impliedly thrown the shield of justice over all; but that was not enough. Here was erected a barrier over which Congress could not ride, except in palpable violation of an expressed constitutional prohibition; and if anything were wanting to indicate the intensity of this provision, it may be seen from the fact that this bulwark was classed with those giving equal but no greater protection to LIFE AND LIBERTY. "No person shall be deprived of *life*, *liberty*, *or property* without due process of law," is the solemn pledge of the nation. This is the promise given every citizen of the United States, high or low, rich or poor; and we ask now, in behalf of these defenders of constitutional liberty, only that protection which our Magna Charta confers. If Congress can take the property of A without process of law, is there any reason why he may not be thus deprived of liberty? And if these can be taken, by what security does he hold his life? This claimant demands of the Government simply the payment of money earned by him in its service. This money became his by virtue of an act of Congress passed June 20, 1864, an act not only plain in its provisions, but which at the time was construed by the Pay and War Departments as conferring upon the officers what we ask. Here is the origin of the property which a subsequent and different Congress attempts to deprive us of.

Let us see how far we are warranted in asking judicial interposition.

Is our claim "property" in the sense of the Constitution, and is it sought to be taken from us without "due process of law?"

It can hardly be necessary to enter at length into a discussion of the divisions of property, and to follow the characteristics of the two great classes. The term property includes every valuable thing which may be made the subject of exclusive ownership.

Any personal right, whether reduced to possession or recoverable by suit at law, is property in the sense of the Constitution. A thing in expectation is as much property as a thing in possession.

The back-pay here claimed is property the same as it would be if the money were in our hands.

Indeed, the right by which we are allowed to bring this suit settles the question of property. The act of Congress which seeks to destroy this right is acknowledgment of the fact that there must be property in the right sought to be enforced, else the legislation is idle and foolish.

We have already seen that the cause of this action rests upon a contract between the Government and the claimants, whereby

the one party was to pay the wages claimed, in consideration of the service to be rendered by the other party. Rights resulting from contracts comprise much the largest portion of litigated cases, and these are all based upon the idea that there is property in them, something of value worth enforcing or defending. Business and business interests, public and private, could not survive for a single day the terrible shock which would follow an announcement that in all these there is no property. The law protects with as great care the thing you are entitled to receive as the thing you have. There is no difference between an unlawful taking of my property in possession and denying me the right to possess myself of that belonging to me which another has.

You may follow through the whole range of Government undertakings—grants, sales, deeds of gifts, contracts—and in none will be found a more clearly definable interest than is here involved.

We presume no argument is called for to show that this "property" is such as the Constitution protects. There is no warrant for supposing that the framers of that great instrument intended that A's property should be held sacred and that B's should be taken at pleasure, nor is there any warrant for assuming that Congress must protect A's lands from seizure, while his horses and cattle are to be at the mercy of the Government.

The Constitution reaches over all, and protects every species of property, and no one class with less sacredness than another.

Let no one dare to question the soldiers' right to the constitutional protection of his property in wages richly earned, while it stands the decreed law of this land that during the existence of slavery the master had a property in the sweat of his fellowman which even a free Constitution could not divest him of.

The claimants have, then, a property in the matter now in controversy, and this property belongs to that class protected by the Constitution.

We are next to inquire whether the act of March 2, 1867, deprives the claimants of this property without "due process of law."

Here we find ourselves surrounded with a cloud of witnesses. In every supreme court of every State, in this court, and in almost every conceivable form, has this question been decided, and decided in our favor; for in every State constitution is to be found a counterpart of this great guarantee of our common Constitution. In some of the States the terms "law of the land" are adopted instead of "due process of law," but these are held to be synonymous, and reach the same end.

Bronson, J., in Taylor *vs.* Peters, 4 Hill, 140, said: "'Due process of law' cannot mean less than a prosecution or suit instituted and conducted according to the prescribed forms and solemnities for asserting guilt or determining the title to property. The same measure of protection against legislative encroachment is extended to life, liberty, and property; and if the latter can be taken without a forensic trial and judgment, there is no security for the others. If the legislature can take the property of A and transfer it to B, they can take A himself, and shut him up in prison or put him to death. *But none of these things can be done by mere legislation; there must be 'due process of law.'*"

"By 'the law of the land,'" says Mr. Webster in the great Dartmouth College case, "is most clearly intended the general law which hears before it condemns; which proceeds upon inquiry, and renders judgment only after trial. The meaning is that every citizen shall hold his life, liberty, and property and immunities under the protection of general rules which govern society. *Everything which may pass under the form of an enactment is not the 'law of the land.'*"

In Murray's Lessees *vs.* Hoboken Land and Improvement Co., 18 Howard, 272, the words "due process of law" are examined, and an elaborate discussion of the whole question presented. (See Sedgwick on Const. and Stat. Construction, 534, *et seq.*, and 610, and authorities cited. Story on Const., secs. 1782, 1789.)

We have examined the Constitution, and found its spirit and its letter grossly and palpably violated. We have found, too, that every principle of justice has been invaded. We are, then, ready to apply the rule laid down in 18 Howard: "The words due process of law imply and include *actor, reus, judex*, regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceedings."

Our property, if the law of March 2, 1867, is a law, has been taken from us without either allegation, opportunity to answer, or trial of any character whatever.

We are here to demand protection under the Constitution; we ask this court to throw around us that great safeguard which "hears before it condemns;" we ask you to stay this ungrateful and unjust invasion of the rights of a class whom, of all others, this nation stands pledged to protect. So long as life, liberty, and property are secured to us in the spirit of our constitutional guarantees, this free Government cannot wholly fail; but neither life, liberty, nor property can be taken in violation of the great right of trial by jury, except at the peril of every principle that makes us freemen.

Mr. Justice Blackstone, with becoming warmth and pride, has said: "A celebrated French writer, who concludes that because Rome, Sparta, and Carthage have lost their liberties, therefore those of England in time must perish, should have recollected that Rome, Sparta, and Carthage, at the time when their liberties were lost, were strangers to the trial by jury." (3d Black. Comm., 379, 381.)

We believe this country will outlive all nations less free than it, but this faith rests upon the great truths which our organic law has embodied, and the admirable system of checks and balances by which those truths are forever secured from being overthrown by either co-ordinate branch of the Government.

An attempt has been made to prejudice the rights of these persons by magnifying the aggregate sums due, and urging the repudiation of the whole on that account. How puerile and paltry such a defence with which to meet the soldiers of the nation.

This court is settling questions of law almost daily which open the door to claims that will overlap this one by millions. The Treasury Department has construed the laws, rightly no doubt, relating to the return of cotton and its proceeds to southern claimants, which has taken millions from the Treasury. There are cotton cases now pending in the court of claims, and all resting upon the proper construction of the law, which involve millions of dollars. We cannot see why the alarm has not been sounded in that direction, if there be either sense or justice in repudiating a debt because of its magnitude.

The pittance here claimed, when aggregated by all similar cases which will ever be presented, would not disturb the equanimity of a Wall-street banker if called upon to pay them. Unusually large sums are litigated out of or into the hands of a few fortunate or unfortunate individuals; but here the stipend claimed, ranging from ten to one hundred dollars, diffuses itself all over the land, and finds its way into the hands of widows and orphans and survivors of our late terrible struggle.

But the truth is and the law is, if the court please, that the question of amount involved in no way controls the law of a case.

It will be seen, however, by the opinions given in the appendix to this argument, that the Department of the Government charged with the duty of paying these most meritorious creditors of the Government has argued strongly in favor of all we claim.

The accounting officer of the Treasury could not concur, and this difference of opinion among Government officers has made necessary this trial. So far as the facts are concerned, it is an

agreed case, and we do not understand the learned solicitor for the United States as desiring this court to do more than lay down the law in such manner as to afford a guide to the proper Department in all similar ones. When this is obtained, both the solicitor and ourselves will have done our whole duty in the premises.

MAY IT PLEASE THE COURT: You have our case, and with it the case of hundreds who await anxiously the final decree of this court.

It was a humane and righteous act of Government which established a tribunal where the humblest citizen may bring into court this great nation and secure there the same recognition of individual rights which is accorded daily between man and man in other courts.

That tribunal of judges learned in the law have, without dissent, given this defendant all he claimed.

With full confidence we submit our case to this last and highest judicial tribunal of the nation.

CHIPMAN & HOSMER,
Counsel for Defendant.

NOTE.—It may not be improper to add that this argument has been prepared in anticipation of the brief of the Solicitor for the United States, but it is believed no material question involved has been overlooked.

C. & H.

APPENDIX.

STATE OF NEW YORK, NORTHERN DIVISION,
OFFICE OF THE ACTING ASST. PROVOST MARSHAL GENERAL,
AND SUPT. VOL. RECRUITING, ALBANY, *July* 2, 1864.

Colonel T. P. ANDREWS,
Paymaster General, U. S. A.

COLONEL: I have the honor to respectfully ask to be informed (in behalf of the United States officers on duty in this office) whether the pay of officers is increased by the late act of Congress making the pay of privates sixteen dollars. This would make our servants' pay sixteen dollars. Are we entitled to draw it?

I am, sir, your obedient servant,
(Signed) T. F. B. REED,
First Lieutenant 5th U. S. Art., Must. and Disbursing Officer.

Respectfully submitted to the Second Comptroller of the Treasury for decision.

It is respectfully suggested that the prohibition contained in section 4, act (No. 165) approved July 17, 1862, was a special one, relating solely to the construction of the first section of the act of August 6, 1861, increasing the pay of private soldiers of the army. As this last enactment has been repealed by sections 1 and 2, act No. 122, approved June 20, 1864, fixing the pay of all privates at $16 per month, it would appear that the decision of the Second Comptroller, April 4, 1833, should now prevail, viz:

"The officer is authorized to claim the pay, rations, and clothing of a private soldier of that arm of the service to which he, the officer, may belong," and as pay is now fixed by the above-cited law at sixteen dollars per month, for all arms of the service, each officer charging for servant may charge at that rate of pay from May 1, 1864. Early attention is respectfully solicited, having several applications to answer.

(Signed) T. P. ANDREWS,
Paymaster General.

PAYMASTER GENERAL'S OFFICE, *July* 5, 1864.

WAR DEPARTMENT, WASHINGTON, 186 .

QUESTION: Whether the act to increase the pay of soldiers in the United States army, and for other purposes, approved June 20, 1864, authorizes the pay allowed to all officers for private servants actually kept in service to be increased accordingly?

OFFICE DEPARTMENT COMMISSARY OF SUBSISTENCE,
WASHINGTON, *July* 26, 1864.

Colonel E. D. TOWNSEND,
Assistant Adjutant General U. S. A., Washington, D. C.

COLONEL: Having applied for the increased pay of servants, as allowed by an "Act to increase the pay of soldiers of the United States Army, and for other purposes," approved June 20, 1864, to Additional Paymaster W. B. Rochester, and it having been refused, with the accompanying endorsements from the Paymaster General and himself, I would most respectfully request that the

matter be laid before the Honorable Secretary of War for his decision in the case. Please find enclosed a memorandum of previous customs in the Pay Department, and the opinion of the Second Comptroller, under which they acted.

I have the honor to be, very respectfully, your obedient servant,

(Signed) G. BELL,
Lieut. Col. and Commissary of Subsistence.

OFFICE DEPARTMENT COMMISSARY OF SUBSISTENCE,
WASHINGTON, *July* 25, 1864.

Major W. B. ROCHESTER,
Additional Paymaster, Washington, D. C.

MAJOR: Enclosed please find my pay accounts for increased pay of servants, for the months of May and June, 1864, as allowed by an "Act to increase the pay of soldiers in the United States Army, and for other purposes," approved June 20, 1864.

Will you please transmit me the amount due?

I am, Major, very respectfully, your obedient servant,

(Signed) G. BELL,
Lieut. Col. and Commissary of Subsistence.

Respectfully returned to Lieutenant Colonel Bell, Commissary of Subsistence. I decline paying the account herewith presented, the Second Comptroller of the Treasury having decided that the act within referred to does not increase the emoluments of officers.

(Signed) WM. B. ROCHESTER,
Additional Paymaster, U. S. A.

WASHINGTON, *July* 25, 1864.

Approved. The Comptroller has decided that the pay of officers' servants is not increased.

(Signed) T. P. ANDREWS,
Paymaster General.

PAYMASTER GENERAL'S OFFICE, *July* 25, 1864.

Memorandum in regard to Increase of the Pay of Officers.

By the law of April 24, 1816, officers are allowed for each private servant actually kept in service, not exceeding the number authorized by regulations, "the pay, rations, and clothing of a private soldier, or money in lieu thereof, on a certificate setting forth the name and description of the servant or servants in the pay account."

The allowance made to the officer on account of his servant is believed to be founded upon this act, and regulated in extent by its provisions. "The pay, rations, and clothing" of a private soldier are designated in this fundamental law, as the means of determining the amount of allowance. Such being the measure of the allowance, the increase of "the pay" of the private soldier, by the act of June 20, 1864, would necessarily seem to create a corresponding increase in the allowance to the officer, which includes this pay, as one of the ingredients essential to the correct determination of its value. But the Second Comptroller thinks otherwise, and has elaborated an opinion in which he contends that the prohibitory clause of the act of July 17, 1862, can be construed to restrict the officer's allowance to the sum paid prior to the act of June 20, 1864, and that a due regard to the condition of the Treasury requires the adoption of this construction.

The language of the clause relied upon by the Comptroller, is as follows:

"SEC. 4. That the first section of the act approved August 6, 1861, entitled 'An act to increase the pay of privates in the regular army and in the volunteers in the service of the United States, and for other purposes,' shall not be so construed, after the passage of this act, as to increase the emoluments of the commissioned officers of the army."

To limit the application of this clause to the increase given by the act of August 6, 1861, more clearly than is done by the language employed would be impossible. The clause is manifestly special in its application, and relates only to the act named in it, and cannot, by any intendment or construction of law, be made to apply to a subsequent enactment. The act upon which the allowance rests is left wholly untouched, and the provisions adopting "the pay, rations, and clothing of the private soldier" as the measure for determining the officer's allowance, remain wholly unaffected and in full force. This being the case, the officer's emolument is increased by the act of June 20, 1864, just as surely as the pay of the private soldier, which constitutes one of its ingredients. So clearly is this conclusion manifest from the bare statement of the case, that a review or criticism of the argument by which the Comptroller arrives at a contrary conclusion would be a work of supererogation.

A strong corroboration of the views herein expressed is found in the uniform practice of the accounting officers of the Treasury, in connection with the history of the congressional legislation on this subject. The pay of the soldier was increased four dollars a month in 1854, making his pay twelve dollars a month, and was again increased to thirteen dollars a month by the act of August 6, 1861. Under the decisions or by the permission of the Second Comptroller, or other accounting officers of the Treasury, each increase of the soldier's pay was accompanied by a corresponding increase of the officer's emoluments. This was the case with the increase of 1861, down to the time of the enactment of the prohibitory clause mentioned.

Can it be seriously contended that Congress, with the whole subject fresh in mind, and knowing, from its own action, the necessity of a prohibitory clause to restrict the emolument, would still increase the soldier's pay without such a clause, if it did not intend that the officer as well as the soldier should participate, in some slight degree, in its bounty? The Second Comptroller contends that the increase of the pay of the soldier was intended as a compensation to him for the loss of a part of his ration, effected by another act. But may it not be as well supposed (for this portion of the Comptroller's argument is merely supposition) that the increase of the officer's emolument was intended as a compensation for the special war tax which he is now called upon to pay, in addition to the largely increased income tax upon his pay. The "illogical conclusion" alluded to by the Comptroller loses its force, if, indeed, it ever had any, when we reflect that an increase which might be improper in 1862, when the necessaries of life were obtained for currency nearly equal in value to gold, would be now highly commendable when the cost of living was expanded nearly threefold, and when, as the Comptroller acknowledges, the allowance now received by officers "for servants" is manifestly less than they are obliged to pay. It is true, he limits this acknowledgment by saying "except when several officers employ the same servant or servants." But this limitation is without weight, for the reason that the Second Comptroller would himself disallow any payment made to "several officers" for the employment of the same servant.

In conclusion, it is respectfully suggested that the remedy pointed out by the Second Comptroller for the correction of any misinterpretation which he may have made in his decision, will hardly satisfy the "most meritorious body of men" whom he compliments, but at the same time deprives for several months of a right which they believe was intended for their benefit, and conferred by express enactment of Congress.

ADJUTANT GENERAL'S OFFICE,
WASHINGTON, D. C., *July* 30, 1864.

Respectfully submitted to the Secretary of War:

An appeal by Lieutenant Colonel George Bell, Commissary of Subsistence, against the decision of the Second Comptroller of the Treasury, allowing commissioned officers the benefit of the increase of pay given enlisted men in section 1, act of Congress of June 20, 1864.

Decision of the Second Comptroller and argument enclosed.

The actual pay of an officer is made up of several items, as pay for himself, subsistence for himself, pay of servants, subsistence of servants, and clothing of servants. Section 12, act of April 24, 1816, allows for each private servant actually kept in service, not exceeding the number authorized by law, "the pay, rations, and clothing of a private soldier, or money in lieu thereof."

Section 1st, of the act of February 21, 1857, fixes the cost of rations at thirty cents. The order of the Secretary of War, of June, 1827, fixes the monthly commutation for clothing allowance at two dollars and fifty cents. These items vary from month to month in actual cost, and it is therefore necessary to have a fixed rate of commutation. Not so the rate of pay. Whenever the pay of a private soldier has been increased, this item of the officer's pay has been in like manner increased. The only exception is made by the act of July 17, 1862, section 4, as follows: "That the first section of the act approved August 6, 1861, entitled 'An act to increase the pay of the privates in the regular army, and in the volunteers in the service of the United States, and for other purposes' shall not be so construed, after the passage of this act, as to increase the emoluments of the commissioned officers of the army." This act, in terms, refers to a particular act of August 6, 1861, and to no other. Only a very strained interpretation could give it application to any or all acts which might thenceforth be passed on this subject.

There is a military necessity, apart from that argued by Colonel Bell on the score of increased taxes and rates of living, why officers should not be excluded from the benefit of the increase. It has been remarked already, by officers of judgment and experience, that too little difference between the pay and allowances of enlisted men and commissioned officers serves to engender insubordination. The enlisted men, already provided with clothing, rations and everything they need for support, and not called on for any considerable expenditure of money, would have comparatively equal available means with their officers, who are generally obliged to exercise great economy. Feeling this real equality of condition, the men naturally discover no essential distinction between their officers and themselves, and are not ready to yield them the obedience necessary to discipline and efficiency.

From remarks made by members of Congress on this subject, it is believed that the increase of pay by the act of August 6, 1861, was given to create a special inducement to men to enlist, which was not required to obtain the requisite number of commissioned officers. The draft system was not then in operation. This motive did not exist in passing the act of June 20, 1864, and it is understood to have been the intention, as expressed by certain members of Congress, in this last case, to directly increase the compensation of officers while directly enacting it for enlisted men.

This subject is respectfully submitted to the Secretary of War, being considered one in which justice to the officers of the regular and volunteer service is involved, and in view of the opinion given by the Hon. J. J. Crittenden, November 13, 1852, (pages 10 and 11 of the enclosed pamphlet,) that the accounting officers of the Treasury are bound by the decisions, orders, and directions of the heads of the executive Departments of the Government.

(Signed) E. D. TOWNSEND,
Assistant Adjutant General.

HEADQUARTERS OF THE ARMY,
WASHINGTON, *August* 2, 1864.

Hon. E. M. STANTON, *Secretary of War.*

SIR: In compliance with your directions, I have examined, and return, with my opinion, the claims of Lieutenant Reed and Lieutenant Colonel Bell, for pay of servants, in accordance with the act of June 20, 1864, and the accompanying remarks of the Second Comptroller, the Paymaster General, and the Adjutant General. I concur generally in the opinions of the two latter officers, which are supported by the very clear argument of Lieutenant Colonel Bell, to which I particularly invite attention. Section four of the act of July 17, 1862, is prohibitory in its character, and refers solely to section one of the act of August 6, 1861, and to no other law, or part of a law, now existing, or which might thereafter be enacted.

I respectfully submit, that not only the general rules of statutory construction, but the plain words and obvious intent of that law, confine it exclusively to the aforementioned section, and that no sophistry of argument can make it apply to anything else.

If it had been intended that the act of July 17, 1862, should apply to all subsequent laws by which a soldier's pay might be increased, assuredly very different words would have been used.

It would be difficult to employ language more restrictive or more opposed to the general application given to it by the Second Comptroller. To sustain his construction, we must insert an entire new clause, to this effect: "And no law hereafter passed increasing a soldier's pay, shall be so construed as to increase the emoluments of commissioned officers." There certainly are no such words in the act, and they cannot be put there by any known rule of statutory construction.

Again: if it had been intended by the law of June 20, 1864, that the increase there given to the soldier's pay should not enure to the benefit of the servants of commissioned officers, would not a clause similar to that of July 17, 1862, have been inserted? And yet it contains not a word looking to such an effect. Moreover, when the attention of the members of the Military Committee, who reported the bill, was called to the matter, they said distinctly that it was not intended to deprive commissioned officers of the benefit of the increase.

Again: the law requires that any officer who employs a soldier as a servant shall deduct from his own pay the cost to the Government of such soldier. According to the construction of the Comptroller, it was therefore the intention of the law of 1864 to increase the amount to be deducted from the officer's pay, in such cases, without any corresponding increase to the pay itself.

But it may be said that the legislature intended in this way to prevent the use of soldiers as servants. By no rule of construction can any such intention be deduced. Soldiers could not previously be employed as servants except in cases of actual necessity, with troops serving in the field, or at some place where hired servants could not be obtained.

If we consider all the laws in *pari materia*, we cannot fail to conclude that the act of June 20, 1864, applies to officers' servants as well as to soldiers in the ranks. The law of April 24, 1816, declares that the pay of officers' servants shall be the same as that of private soldiers. All subsequent laws changing the soldier's pay have been construed as changing also that of officers' servants, even including the act of August 6, 1861, until that act was specially excepted by the law of 1862. As this law of 1862 refers only to a particular law, all subsequent laws on the subject must be subject to the same construction and application as those which had been previously passed. There is no more reason for giving it a prospective than for giving it a retrospective action. It can properly have neither.

I therefore respectfully recommend that the Secretary of War sustain the construction given to the law of June 20, 1864, by the Paymaster General and Adjutant General.

Very respectfully, your obedient servant,

(Signed) H. W. HALLECK,
Maj. Gen., Chief of Staff.

WAR DEPARTMENT, SOLICITOR'S OFFICE,
WASHINGTON, *August* 11, 1864.

The Honorable EDWIN M. STANTON, *Secretary of War:*

SIR: The question submitted is, whether the "Act to increase the pay of soldiers in the United States Army, and for other purposes, approved June 20, 1864," authorizes the pay "allowed to all officers for private servants actually kept in service to be increased accordingly."

In answer, I have the honor to transmit the following opinion:

A marked peculiarity in the legislation of Congress relating to the army, is that, in providing compensation for officers, or others, engaged in the service, the statutes refer to and adopt, by way of reference thereto, as a standard or rule, the pay, emoluments, and allowances of officers previously established by law, and familiarly known to gentlemen of the military profession.

Many instances might be cited as examples of this mode of indirect legislation, sometimes resulting in embarrassing questions of law, as the case of Wetmore *vs.* The United States, (10 Peters, Sup. Ct. Reps., 647,) in which a paymaster of the United States, appointed under the act of Congress passed April 24, 1816, was entitled to the pay and emoluments of a major, and the question arose whether his pay was that of a major of cavalry or of a major of infantry. The difference in their respective pay and emoluments amounted, as it is stated, to about $225 per year. The court decided against the paymaster.

The laws allowing private servants to officers in the army have been of the same general character as regards their mode of providing for their pay and allowances.

No statute specifies that private servants shall be paid a specific amount of money, rations, clothing, or otherwise. The acts of Congress allow officers, according to their respective ranks, to employ private servants, and for these thus actually employed, allowance is made to the officers. The act of April 24, 1816, (ch. 69, sec. 12,) provides that "All officers be allowed for each private servant actually kept in service, not exceeding the number authorized by existing regulations, the pay, rations, and clothing of a private soldier, or money in lieu thereof, on a certificate setting forth the name and description of the servant or servants in the pay account."

At the date of this act, (1816,) the pay of the private soldier was but $5 per month, and that was the amount, in addition to the value of rations and clothing, then allowed for each servant. From time to time the pay of private soldiers was raised by acts of Congress. In July 7, 1838, to $7 per month; in August 4, 1854, $11 per month. In March 19, 1836, the pay of volunteers and militia in the service of the United States was equalized with that of the infantry of the Army of the United States; and in August 6, 1861, the pay was raised to $13 per month.

At all these periods the allowance for servants kept pace with the increase of the soldier's pay. The law was understood to authorize it, and was so administered by the Government. No other standard of allowance is known at this day, except that which was established by the act of 1816, viz: the pay of the soldier, as from time to time regulated by law. The act of August 6, 1861, which raised the soldier's pay to $13 per month, also raised the allowance for servants accordingly.

It was because Congress recognized the statute as having this effect that a new provision was introduced into the act of July 17, 1862, (section 4,) "That the first section of the act approved August 6, 1861, entitled," &c., "shall not be so construed, after the passage of this act, as to increase the emoluments of the commissioned officers of the Army."

So long, therefore, as it is necessary to resort to the first section of the act of August 6, 1861, in order to ascertain the allowance for a servant, that allowance is not to be deemed, as heretofore, increased by that act after July, 1862. But when the first section of the act of August 6, 1861, by being repealed, furnishes no longer the standard by which to measure the allowance for servants, we must then look to the new standard which the law provides.

The effect of the act of July 17, 1862, was to limit or qualify the legal effect of this act of 1861, on this subject. The effect of the act of June 20, 1864, was to erect an entirely new standard for soldiers' pay. No qualifications limiting the legal effect of that act, taken in connection with the act of 1816, is found. Indeed, the act of 1864, in effect, repeals that part of the act of 1861 which regulates soldiers' pay, in the same way as the act of 1861 had repealed all prior provisions of law on the subject of soldiers' pay. If it were the intent of Congress to continue the pay of servants at any lower rate than that of a soldier, such intention would have been declared by repealing the act of 1816, or limiting the necessary operation of the act of 1864. The statute of 1862 merely tells us how we shall construe the act of 1861 on the subject of servants' pay, but it is far from legislating how all future laws should be construed when relating to that subject.

No instance is now recollected in which the legislature has attempted to construe the force and effect of laws not in existence. Nor does it seem to be in accordance with any rule for interpreting statutes that an enactment declaratory of the meaning and intent of one statute should be held to be declaratory of the meaning of all statutes, or of any statute except that referred to. Certainly it cannot be held that in 1862 Congress placed an interpretation or limitation of a statute not then in existence, and not passed until two years after that date.

The statute of June 20, 1864, must then have its usual and ordinary force and effect. It places the soldier's pay at $16 per month, and furnishes the standard of the allowances of servant's pay at the same rate. If Congress intend to modify its effect by reducing the allowance for servants, a declaratory act may be passed; but until that is done officers are by law entitled to the pecuniary allowance for each servant of $16 per month.

Very respectfully, your obedient servant,

(Signed) WILLIAM WHITING,
Solicitor of the War Department.